

**STAFF REPORT**  
**Community Development Department**  
**Petition Number: VAR-12-002**

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**To:** The Charlotte County Board of Zoning Appeals

**From:** Shaun Cullinan, Zoning Official

**Prepared By:** Ken Quillen, AICP, Planner III

**Report Date:** May 2, 2012

**BZA meeting date:** May 9, 2012

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**Requested Action/General Information:**

Robert Bernisson, agent for Ray Family Limited Partnership, is requesting a variance to reduce the required 10' side yard setback by 7.5' to allow a 2.5' side yard setback, to allow a proposed observation deck. This property is located at 1200 Shore View Drive, on Manasota Key (see **Location Map**). The attached **Zoning Map** shows the zoning of this property, which is Manasota Multifamily-12 (MMF-12). This property has a High Density Residential, Future Land Use Map (FLUM) designation.

The Englewood Shores Subdivision was platted in 1953 and the existing single-family residence was constructed in 1954. The applicant has submitted the attached **Boundary Survey** (**Exhibit A**), which shows the existing 12,300 square foot lot (50' by 246'). This survey shows the location and setbacks of existing structures including; the one-story single-family residence and lanai, concrete and asphalt paving, a wood deck and a seawall as they are currently located on Lot 12.

The applicants would like to construct a second raised wooden deck to be used as an observation platform. The applicant has submitted the attached **Site Plan** (**Exhibit B**) along with an **Enlarged Drawing** (**Exhibit C**) showing the location of the proposed new deck above the lanai. A building permit cannot be issued for this structure because it does not meet the 10' setback requirement of the Zoning Code. As such, the owners are requesting a variance to allow a building permit to be issued for this deck.

Section 3-9-53(g)(8) of the Zoning Code requires a minimum lot width of 80', lot area of 7,500 square feet, and side yard setbacks of 10' for properties located in the MMF-12 zoning district. As such, this lot is non-conforming with regard to lot width because of its 50' width. However, given the required 10' side yard setbacks, there is still 30' of buildable area on this lot. The current owners of this property have control over the location and construction of the proposed wood deck. Staff must point out that there is adequate room on this property to construct a deck according to code. Staff has prepared the attached **Exhibit D** showing how a proposed deck could be located next to the lanai, instead of above it, and still meet all requirements of code.

The applicant has submitted the attached **Narrative** (**Exhibit E**) explaining why the applicant believes this request for a variance should be granted. An Environmental Specialist has performed a cursory environmental review and their comments are in the attached **Memorandum** (**Exhibit F**) dated April 26, 2012. The Manasota and Sandpiper Key Architectural Review Committee met on April 18, 2012, and recommended denial of this requested variance (see attached **Exhibit G**).

**Findings:** The seven standards for approval of a Variance according to Section 3-9-6.1(d) of the Charlotte County Zoning Code are as follows:

1. Unique or peculiar conditions or circumstances exist which relate to the location, size and characteristics of the land or structure involved and are not generally applicable to other lands or structures.

Finding: This lot, which is 12,300 square feet in area and 50' wide, was created in 1953 along with 128 other lots, most of which are 50' in width. Hundreds of other lots have been created on Manasota Key, which are also 50' in width. This 50' width is non-conforming under the current code, which requires a minimum 80' lot width. The first Zoning Code, adopted in 1962 required 7.5' side yard setbacks. The Manasota Key Zoning District Overlay Code, adopted in 2005, established a new side yard setback of 10'. These conditions are generally applicable to other lots located on Manasota Key.

2. The strict and literal enforcement of the Zoning Regulations would create an undue hardship as distinguished from a mere inconvenience on the property owners. Physical handicaps or disability of the applicant may be considered where relevant to the request.

Finding: The strict and literal enforcement of the Zoning Code would not create an undue hardship because; there are other locations on the lot where an observation deck could be constructed according to code.

3. The variance requested does not involve any use, which is prohibited in the district where the property is located.

Finding: The variance request is to allow a deck, which is a permitted accessory structure in the MMF-12 zoning district.

4. The granting of a variance would not be injurious to or incompatible with contiguous uses, the surrounding neighborhood or otherwise detrimental to the public welfare.

Finding: Because of the proposed height, size and location of the proposed deck, 2.5' from the lot line, the granting of the requested variance may be considered injurious or incompatible with the adjacent residential uses.

5. The condition giving rise to the requested variance has not been created by any person presently having an interest in the property and the conditions cannot reasonably be corrected or avoided by the applicant.

Finding: The conditions given rise to the requested variance have been created by the applicants, who are the property owners. The conditions can reasonably be corrected or avoided by the applicant by relocating the proposed deck.

6. The requested variance is the minimum modification of the regulation at issue that will afford relief.

Finding: The requested variance is not the minimum modification that will afford relief because there are locations where the deck could be constructed that meet code.

7. The requested variance is consistent with the **Smart Charlotte 2050 Plan** (Charlotte County Comprehensive Plan).

Finding: Objective 3.1 (Page 1-225) of the Future Land Use Element states that "private property owners will respect the rights of their neighbors and will develop land in a manner which is respectful of the rights of others." Staff believes that the proposed variance request may be considered inconsistent with this portion of the Comprehensive Plan.



### **ANALYSIS AND CONCLUSIONS:**

After review of the site and the application requesting a variance to reduce the required side yard setback, to allow a new wood deck, staff believes that the requested variance does not meet all seven criteria for granting a variance.

If the Board of Zoning Appeals decides to approve the requested variance staff recommends the following conditions be adopted, as conditions of approval, to ensure that this development is in compliance with the purpose and intent of the Zoning Code. The recommended condition(s) are as follows:

1. The variance, as approved by the Board of Zoning Appeals, is to reduce the required 10' side yard setback by 7.5' to allow a 2.5' side yard setback, for a new wooded deck only as proposed in the drawings submitted with this application.
2. This new deck may not be enclosed with a screen room or covered with any type of roof.
3. This variance extends only to the new wooden deck as proposed and shall carry with this structure only. If the deck is ever removed or destroyed all future development must be constructed according to all applicable codes in existence at that time, unless a new variance is granted specific to the development proposed at that time.

**Please be advised that the final decision regarding the petition rests with the Board of Zoning Appeals, and will be decided upon consideration of all the evidence introduced at the hearing.**

Attachments: Staff Report (3), Location Map, Zoning Map, Aerial Photo, Boundary Survey, Site Plan, Enlarged Drawing, Alternate Deck Location, Narrative (4), Environmental Specialist Memorandum and Manasota Key Recommendation



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## VAR-12-002 Location Map

Map Prepared By  
Charlotte County  
Community Development  
Department



### 13/41/19 West County

This map is a representation of compiled public information. It is believed to be an accurate and true depiction for the stated purpose, but Charlotte County and its employees make no guaranties, implied or otherwise, to the accuracy, or completeness. We therefore do not accept any responsibilities as to its use. This is not a survey or is it to be used for design. Reflected Dimensions are for Informational purposes only and may have been rounded to the nearest tenth. For precise dimensions, please refer to recorded plats and related documents. Created 04-19-2012



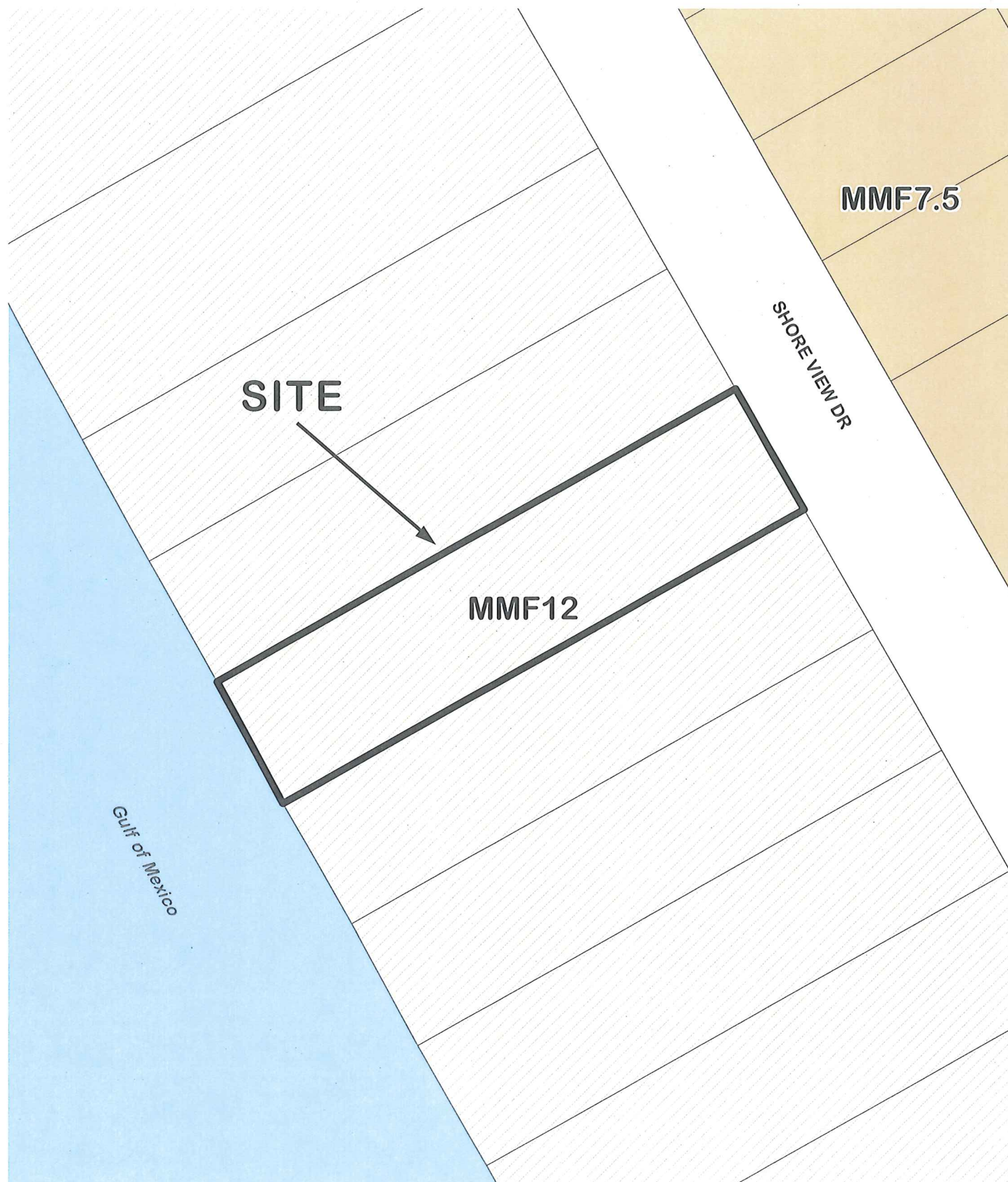




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## VAR-12-002 Zoning Map

Map Prepared By  
Charlotte County  
Community Development  
Department



13/41/19 West County

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## VAR-12-002 Aerial Photo

Map Prepared By  
Charlotte County  
Community Development  
Department



13/41/19 West County

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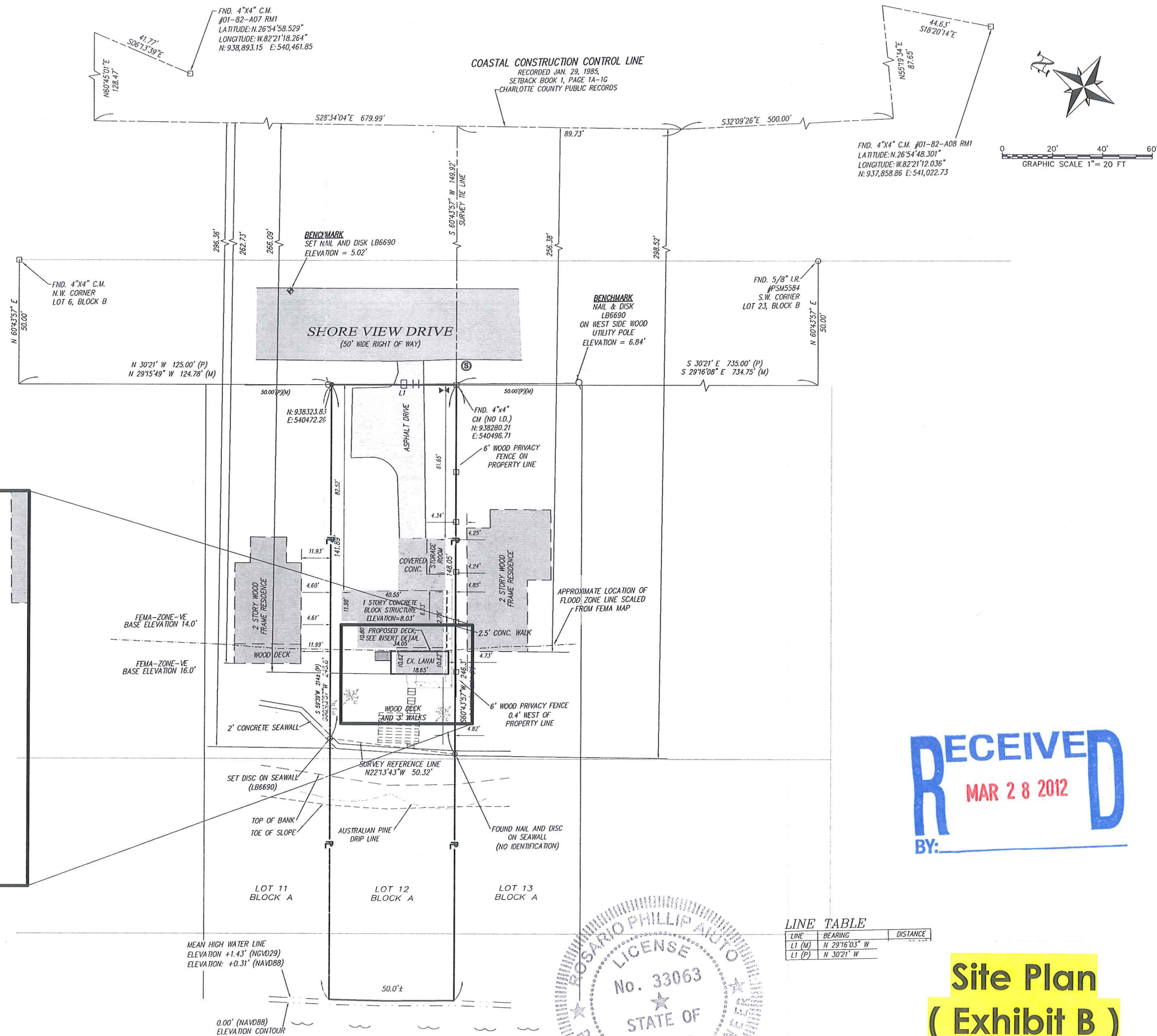








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MAR 28 2012  
BY: \_\_\_\_\_

# Site Plan ( Exhibit B )

PREPARED FOR:

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TRUEX PREFERRED CONSTRUCTION, LLC

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579 S. INDIANA AVE., SUITE A  
ENGLEWOOD, FLORIDA 34223  
PHONE: (941) 475-6680  
FAX: (941) 475-6679

# BANKS

## ENGINEERING

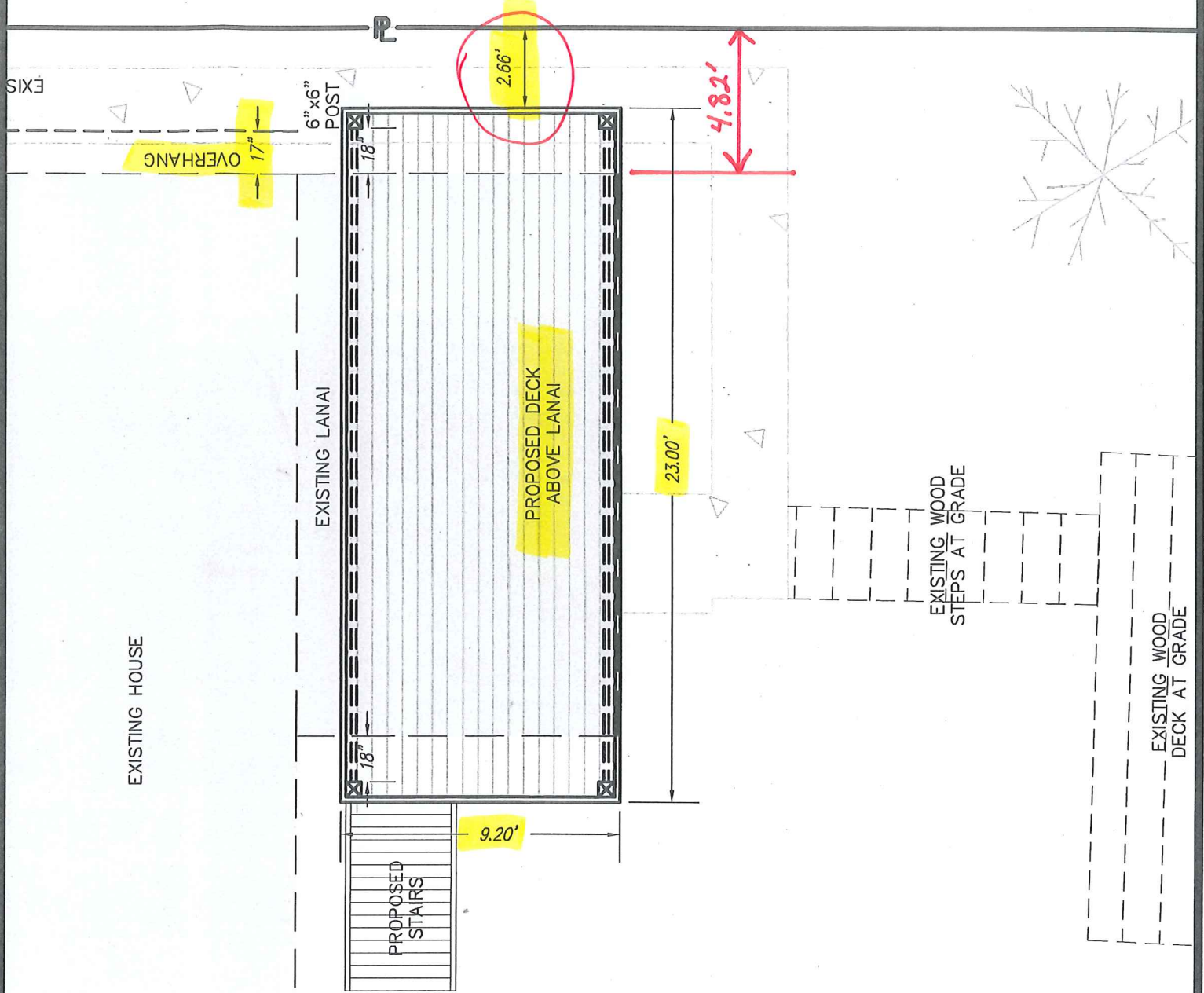
Professional Engineers, Planners, & Land Surveyors  
Serving The State Of Florida

12653 SW COUNTY ROAD 769 - SUITE B  
LAKE SUZY, FLORIDA 34269  
PHONE: (941) 625-1165 FAX: (941) 625-1165  
ENGINEERING LICENSE # EB 6469  
SURVEY LICENSE # LB 6690  
WWW.BANKSFC.COM

CCCL EXHIBIT  
1200 SHORE VIEW DR  
CHARLOTTE COUNTY, FLORIDA

DATE	PROJECT	DRAWING	DESIGN	DRAWN	CHECKED	SCALE	SHEET
2-24-12	3694	3694	RPA	RPA	TRR	1"=20'	1





Enlarged Drawing  
( Exhibit C )







Narrative -- Variance

LARRY AND FRANCIS RAY



This is a request for a Variance to Section 3-9-<sup>53</sup>~~54~~(g)(8) of the Charlotte County Zoning Code. This section regulates development standards in the Manasota multifamily (MMF) zoning district. The applicants, Larry and Francis own lot 12, Block A, Englewood Shores subdivision, on Manasota Key. The parcel contains 12,333.99 sq. ft., and has an existing home built in 1954, which clearly does not meet all of the new Manasota Key zoning regulations. The home previously had a deck above the covered lanai that was removed. The owner recounts the prior deck was built in 1994 and the attached photograph was taken in 1998. The owners wish to build a new deck over the lanai, just as the old one was.

This Variance will allow the new deck to be constructed with a side yard setback of 2.5 feet, within the roofline of the existing house, only the footers being outside of that. Note, the plans show the deck at 2.66 feet from the side lot line, but the 2.5 figure is being used to allow for construction tolerances.

This application meets the criteria for a Variance as follows:

1. Unique or peculiar conditions or circumstances exist which relate to the location, size, and characteristics of the land and structure involved, and are not generally applicable to other lands or structures. The subject property contains a home built in the 1950's which previously had a deck over the covered lanai. The applicants simply wish to construct a new deck to replace the one that was previously removed. The long narrow lots on Manasota Key are peculiar, and with the existing home already in place, there is

( Exhibit E-1 )



no other place to construct the elevated deck from which to enjoy the Gulf of Mexico and sunsets.

2. Strict and literal enforcement of the zoning regulations would create an undue hardship as distinguished from mere inconvenience on the property owners. To require a 10 foot side yard setback when the rest of the house does not meet that setback would create an undue hardship. In placing the deck virtually within the existing building footprint, it allows the structure to be built over the existing lanai. There would be no place to put the footings to the deck if it had to be 10 feet from the property line, they would have to be inside the lanai, causing a hole to have to be cut in the roof which would create a hardship.
3. The Variance requested does not involve any use which is prohibited in the district where the property is located. An accessory deck is permitted in the district, and one previously existed.
4. The granting of the Variance would not be injurious to or incompatible with contiguous uses, the surrounding neighborhood or otherwise detrimental to the public welfare. The deck will actually be an enhancement to the neighborhood. It would not be incompatible with continuous uses, surrounding neighborhood, or otherwise detrimental to the public welfare.
5. The condition giving rise to the request of Variance is not being created by any person presently having interest in the property and the conditions cannot reasonably be corrected or avoided by the applicant. The single family home on site was constructed in 1954, long before the Ray's purchased the property. The new Manasota Key zoning

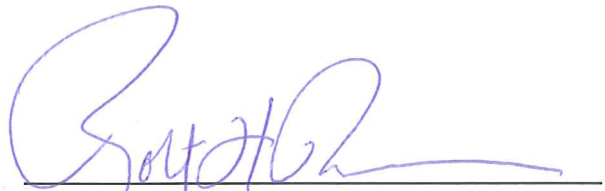
regulations, in section 3-9-<sup>53</sup>~~54~~(q) and (r), state the new regulations do not make a structure non-conforming, and in a natural disaster an existing structure that doesn't meet the new zoning code setbacks can be rebuilt within the same footprint as the previously existing building. Allowing for the deck within this footprint meets the intent of the code.

6. The requested Variance is the minimum modification of the regulations at issue that would afford relief. The deck is being constructed with the supporting members just outside of the lanai walls, making it the minimum modification of the regulations at issue.
7. The requested Variance is consistent with the Charlotte County Comprehensive Plan. There are no comprehensive plan goals, objections, or policies that are contrary to this request.

Based on the foregoing, it is respectfully requested that the application for a Variance be approved. Attached drawings depict the site, as well as plans for the deck.

It is respectfully requested the Variance be approved.

Respectfully submitted this 27<sup>th</sup> day of March 2012.



Robert H. Berntsson

( Exhibit E-3 )





**RECEIVED**  
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BY: \_\_\_\_\_

**( Exhibit E-4 )**



# Charlotte County Government

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## MEMORANDUM

**Date:** April 26, 2012  
**To:** Ken Quillen, Planner III  
**From:** Jamie Scudera, Environmental Specialist  
**Subject:** VAR-12-002  
Ray Family Setback Variance  
1200 Shoreview Drive

The Zoning Environmental Review Section has conducted a cursory review (additional wildlife or environmental reviews may be required by state and/or federal agencies) of the above referenced petition for compliance with Environmental, Tree and Landscaping codes/ordinances and offers the following comments:

- ❖ A GIS aerial and preliminary environmental review was conducted by staff. The property consists of a developed single family residence on a highly sensitive coastal island community. It is seaward of the Florida Department of Environmental Protection Coastal Construction Control Line and is located in the Charlotte County Sea Turtle Lighting review area. The area proposed to be developed through this petition is located on the rear of the house over an existing lanai. The rear of the property fronts the Gulf of Mexico and contains a rip rap seawall/retaining wall.

If this petition is approved, the following conditions will be reviewed for compliance upon Site Plan Review (if required) and the issuance of any county permit or land improvement activities:

- ❖ All applicable county, state and federal authorizations/permits and mitigation (if necessary) will be required.

**( Exhibit F-1 )**

**COMMUNITY DEVELOPMENT DEPARTMENT - Zoning Division**

18400 Murdock Circle | Port Charlotte, FL 33948  
Phone: 941.743.1290 | Fax: 941.743.1598



- ❖ If this proposal moves forward, it will be reviewed for compliance with:

Chapter 3-5:

Article IV CLEARING, FILLING AND SOIL CONSERVATION,  
Article XII SEA TURTLE PROTECTION,  
Article XIII SHORELINE PROTECTION,  
Article XV. SURFACE WATER AND WETLAND PROTECTION

Chapter 3-2:

Article IX. *TREE REQUIREMENTS\**

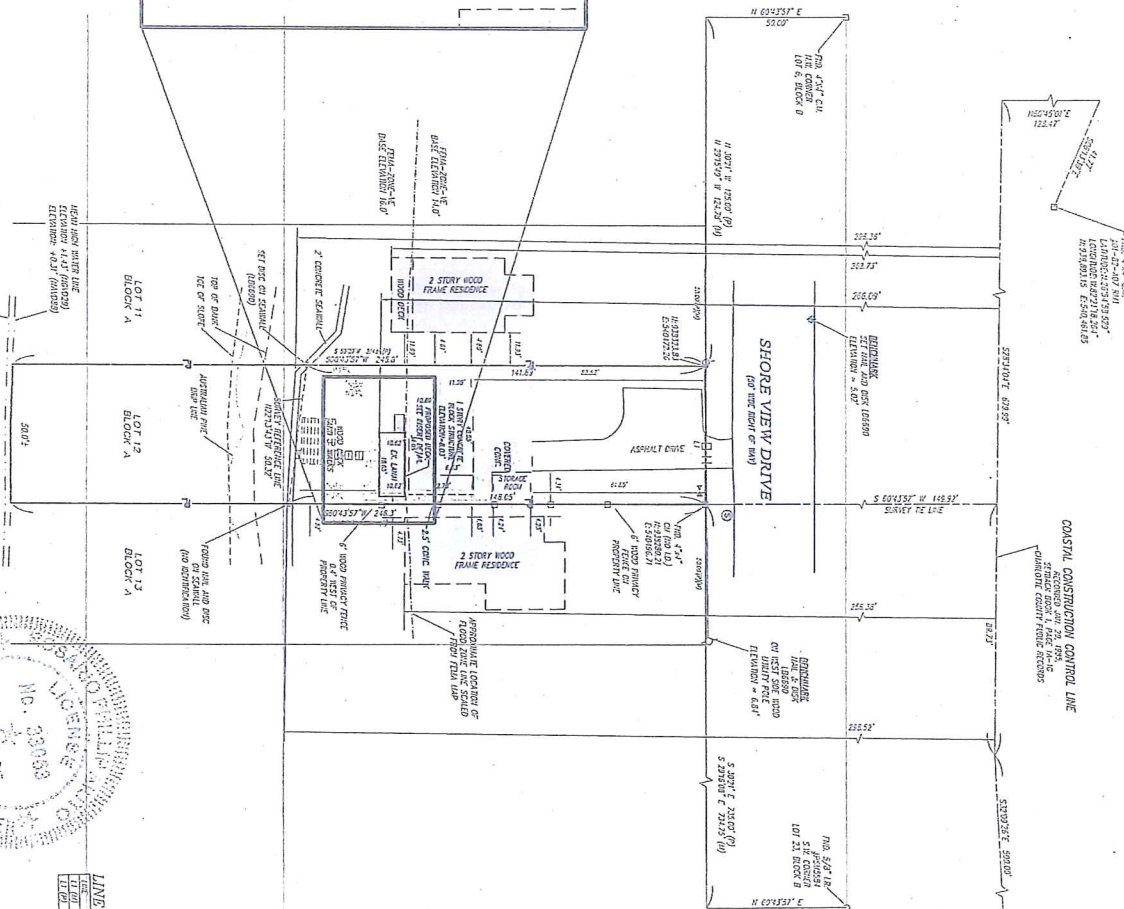
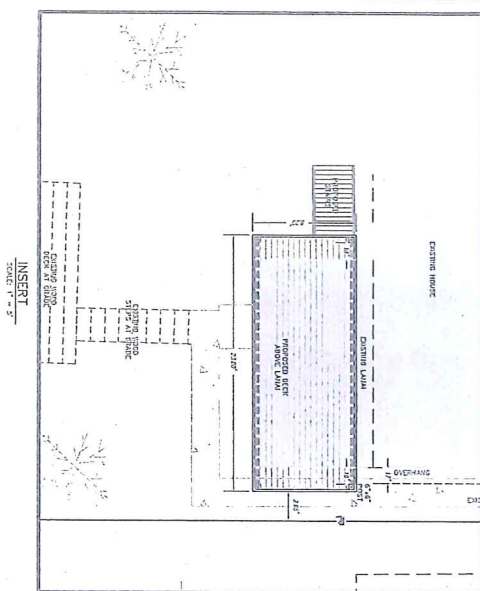
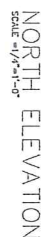
**\*\*Per Section 3-2-190 all heritage trees must remain preserved.**

- ❖ The project must also comply with the Charlotte County Smart Charlotte 2050 Comprehensive Plan.

If there are any questions pertaining to this review please feel free contact me at (941) 743-1290.

JS

**( Exhibit F-2 )**



LINE	DATE	DISTANCE
11 (M)	11/20/76	50.00
11 (P)	11/20/76	50.00

Recommendation: ☒ Approve ☐ Deny  
Date: 4/18/13  
Signed: W. King

Comments: outside the foot print of  
No real need established

( Exhibit G )

**TRUEX PREFERRED CONSTRUCTION, LLC**  
579 S. MIDLAND AVE., SUITE A  
ENGLEWOOD, FLORIDA 34223  
PHONE: (341) 475-6600  
FAX: (941) 475-6673

**BANKS**  
**ENGINEERING**  
Fullerton, Torrance, Los Angeles, Irvine  
Thousand Oaks, Santa Monica

1200 SHILOH  
CHARLOTTE, NC

DATE	PROJECT	ISSUING	DESK
2-24-12	3694	2024	RP

SHEET  
1